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# Directive 86-36: Security Corporations Election For Voluntary Withdrawal Of Classification

FACTS: Flora Corporation is a domestic corporation. For the past several years, it has been engaged exclusively in buying, selling, dealing in, or holding securities on its own behalf and not as a broker, within the meaning of G.L. c. 63, § 38B, and has been classified as a security corporation.

During its current taxable year, Flora Corporation continues to qualify for tax treatment under G.L. c. 63, § 38B. Due to its peculiar facts and circumstances, however, it anticipates that its tax liability will be less if it is taxed under the general corporate excise imposed by G.L. c. 63, § 32.

ISSUE 1: May Flora Corporation elect to have its classification as a security corporation withdrawn even though it is engaged exclusively in buying, selling, dealing in, or holding securities on its own behalf and not as a broker.

ISSUE 2: What procedures must Flora Corporation follow in order to have its classification as a security corporation withdrawn?

DISCUSSION: In general, if a corporation is engaged exclusively in buying, selling, dealing in, or holding securities on its own behalf and not as a broker, it may elect tax treatment under G.L. c. 63, § 38B by applying to the Commissioner for classification as a security corporation. This election is voluntary. Accordingly, a corporation that has been classified as a security corporation may also elect to have that classification withdrawn by the Commissioner, even though it is still engaged exclusively in buying, selling, dealing in, or holding securities on its own behalf and not as a broker.

In order to have its classification withdrawn, a corporation must notify the Commissioner of its election in writing. This notice must be on corporate letterhead and must be signed by the president, vice-president or clerk of the corporation. The notice must also include the corporation's federal and Massachusetts identification numbers and a brief statement of the reason for the request.

A notice of withdrawal must be filed by a security corporation before the end of its taxable year. See *generally* G.L. c. 63, § 38B. A voluntary withdrawal is effective for the taxable year in which the notice is received by the Commissioner and for all succeeding taxable years of the corporation, unless and until the corporation successfully reapplies for classification as a security corporation.

Notice should be sent to the following address:

Massachusetts Department of Revenue  
Determination Bureau  
Attn: Security Corporation Unit  
P.O. Box 7027  
Boston, Massachusetts 02204

DIRECTIVE 1: Flora Corporation may elect to have its classification as a security corporation withdrawn even though it is engaged exclusively in buying, selling, dealing in, or holding securities on its own behalf and not as a broker.

DIRECTIVE 2: In order to have its classification as a security corporation withdrawn, Flora Corporation must notify the Commissioner in writing, in the manner described above. The notice must be filed by Flora before the end of its taxable year.

REFERENCE: G.L. c. 63, § 38B

31 December 1986

/s/Ira A. Jackson

Ira A. Jackson

Commissioner of Revenue

DD 86-36

This Directive represents the official position of the Department of Revenue on the application of the law to the facts as stated. The Department and its personnel will follow this Directive, and taxpayers may rely upon it, unless it is revoked or modified pursuant to 830 C.M.R. § 62C.01(5)(e). In applying this Directive, however, the effect of subsequent legislation, regulations, court decisions, Directives, and TIRs must be considered, and Department personnel and taxpayers may rely upon this Directive only if the facts, circumstances and issues presented in other cases are substantially the same as those set forth in this Directive.

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